and MCI, let alone arrangements made by the hundreds of smaller carriers. To assure even-handed enforcement, it would be necessary to institute reporting requirements applicable to all carrier business dealings with any existing or potential information provider. The examples the CLECs have pointed out in Comments and Reply Comments are, in all probability, a small percentage of the relevant universe. Since there are millions of information service providers and hundreds of carriers, this would represent a huge volume of filings -- exceeding by orders of magnitude the volume of carrier tariffs the Commission has been so eager to avoid maintaining in recent years.

In many instances, moreover, the carriers may not know that customers are information service providers. Indeed, one of the most fundamental developments in telecommunications is that all kinds of communications are carried indiscriminately with no need for carriers to make distinctions the basis either of content or of electronic form. Conscientious carriers would need to go to enormous efforts to ascertain which of their customers may fall into that wide open category and, if so, whether they may have some relationship with the customer or be construed as paying the customer some kind of remuneration. Some would not.

Since there is an undeniable public desire for a large variety of information services, the Commission effort to suppress their carriage outside of expensive and inadequate 900 service is probably doomed to the same fate that occurred to the great national experiment called "Prohibition." The proposal rule would do enormous damage affecting large numbers of people and not even achieve its avowed purpose. In enacting it, this Commission would betray its repeated assurances to the public that it would encourage innovation and diversity of services and eliminate unnecessary regulatory obstructions.

The Proposed "Redefinition" is Anticompetitive

A number of parties agreed with CLECs that the "redefinition" would be anticompetitive. HFT, LO-AD and American International observe (Comments at pp. 4-5) that:

> The clear intent of the proposed rule change is to relegate all interstate "information" services to 900 service. It is undisputed that 900 services are already seriously dominated by AT&T. By forcing all information based transmissions to the 900 service area, AT&T's dominance is magnified and promoted. This is precisely the ill that deregulation sought to cure.
>
> Moreover, 900 service lacks portability, a characteristic which is essential to insure access to all regional markets and thus promote rather than inhibit competition. It is well known that providers of information services rely heavily on customer loyalty to particular phone numbers through advertising. Without portability, movement through the regional markets is eliminated and competition suffers. Ultimately, the customer suffers as a result of the lack of options for the services they seek.
>
> It would truly be a shame to solidify AT&T's effective monopoly in the 900 service arena by forbidding competitors to have access to the same markets where these competitors can offer their services at the reasonable and customary long distance rates charged by the likes of AT&T.

While the Commission is fond of pointing out the existence of hundreds of carrier to show that competition has arrived, this is emphatically not the case with respect to 900 service. The 900 number databases are databases within the exclusive control of the interexchange carriers controlling the numbers. Indeed, the rationale the Commission used to escape Congress's desire that full number portability be achieved is that the 900 number databases are not within the control of the local exchange carriers and Section 251 of the Act explicitly and specifically only imposes a number portability obligation on local exchange carriers. First Report and Order and Further Notice of Proposed Rulemaking in Telephone

Number Portability, 11 FCC Rcd 8352, 8454 (1996). This excuse ignores the fact that the LECs ceded control over the numbers to AT&T in the first place, and that AT&T is under an independent statutory obligation, under Section 251(a)(1), to furnish interconnection on a non-discriminatory basis to other carriers. But irrespective of the merits of the Commission's unfortunate decision with respect to 900 service portability, the important fact here is that the proposed "redefinition" would greatly compound the damage done to the public by the failure to insist upon 900 service portability. 900 service is now an anticompetitve enclave and its dimensions should not be further increased by Governmental policies forcing unwilling customers to use that anticompetitve service.

The hundreds of other carriers are, as a practical matter, frozen out of the 900 service business since they would need to establish 900 database systems of their own from scratch and would then find it nearly impossible to overcome AT&T's established position in the 900 service market since, as explained more fully in the CLECs' initial Comments, subscribers invest heavily in advertising their 900 numbers and would lose that investment if they were to switch to another carrier -- even if that other carrier offered substantially reduced rates.

900 service is monopoly's last redoubt in the world of competitive telecommunications. It is like Albania -- the one remaining place where a thoroughly disgraced ideology still controls. In large measure, this disturbing left-over from an earlier age reflects the perception the Commission may have had that 900 service was a highly specialized and relatively unimportant service when viewed on an industry-wide basis. But such relics of an age otherwise gone by have an unfortunate way of re-asserting themselves. The instant proposal would use Governmental coercion to force customers into the one remaining monopoly

service. Instead of encouraging competition, the Commission would be coercing the public into the hands of the country's leading monopolist.

This proposal is not about protecting consumers from free information services, it is about coercing consumers into patronizing an old monopoly seeking to ply its long cherished practice of extracting monopoly profits from the public in the one substantial market where it can still do so. Nothing could be more detrimental to the public interest and contrary to every major policy pronouncement by the Commission and by Congress over the last decade.

AT&T's Attempt to Hobble Its Competitors While Exempting Itself is Inconsistent

AT&T opposes the redefinition of "pay-per-call services" set forth in the Commission's Order to the extent that it would outlaw AT&T's own TSAA contracts, but seeks to replace it with its own version of a redefinition to do competitive damage to its competitors while leaving AT&T untouched.

The fact that the FCC's proposal would have the effect of banning AT&T's TSAA contracts was pointed out at pages 17-18 of the Comments filed by CLECs. For the reasons stated therein, however, neither AT&T's TSAA nor any other service imposing no premium on calls to information services falls within the definition of "pay-per-call services and therefore is not covered by Section 228 of the Communications Act.

AT&T correctly points out (at p. 8) that: "Arrangements between carriers and their customers take myriad forms, and will likely take on new patterns with the advent of local competition, many of which are economically efficient and do not lead to abuses." AT&T also correctly states (at p. 5) that the Commission's "proposal sweeps too broadly because it

would prohibit not only abusive practices, but also arrangements that are both benign and economically efficient." Unfortunately, AT&T appears to consider "services that "are both benign and economically efficient" as the services it provides and "abusive practices" as services provided by its competitors.

AT&T thus seeks, in essence, to escape the misguided proposal set forth in the Commission's Order while nevertheless using it to hobble its competitors. It would create a regulatory environment which is, in some ways, the reverse of the one that existed until recently in which the dominant carrier was subject to regulation and its new competitors were not. Under AT&T's proposal, AT&T would not be subject to Section 228 regulation but its new competitors would be subject to it and undoubtedly to the harassment that would inevitably follow any attempt to apply a hopelessly vague and fundamentally meaningless standard of AT&T's own devising which is thoroughly incongruent with the standard established by the statute.

AT&T attempts to build a standard to replace the clear statutory standard on the basis of a single phrase uttered in a staff letter about an individual and unrepresentative international service already the object of an FTC consent decree -- written without participation by the general public -- which is currently the subject of a pending application for review. Under AT&T's proposal, a party accused of a violation would need to meet a burden of proof of demonstrating that it has not "acquired an interest in promoting the delivery of calls to a particular number." Clearly, however, any incentive arrangement which provides compensation on the basis of the volume of calling falls within that definition -- including paid by the carrier AT&T with respect to its own TSAA service. Moreover, even if a flat sum (not

explicitly dependent upon volume) were paid to the information servicve provider, it might be because continuation of the service is dependent upon maintenance of such an incentive. And, although AT&T suggests three examples of how its proposed burden could be met (at p. 9), in point of fact none of those three examples meet the standard it has proposed, let alone the standard the Commission proposed. A carrier obviously believes that giving incentives to information services that stimulate its traffic either achieves "cost savings" or properly reflects "the cost or value services actually provided to the carrier," or it would not offer them. But AT&T seeks to impose upon its competitors a requirement to "make a showing"of some kind or another, tie them up in regulatory knots and inhibit them from introducing innovative services. AT&T simply seeks to tie up its competitors in a meaningless exercise of trying to prove something that the statute does not require them to prove -- while exempting itself from any such burden.

The only relevant inquiry, under the statute, however, is whether callers are required to pay premium charges -- or charges in excess of, or in addition to, transmission charges. What AT&T seeks to do is to inhibit new competitive offerings by holding out the threat of delaying and encumbering them with quibbling over a standard that fundamentally makes no sense. This is clearly an attempt to mis-use the regulatory process for unworthy and anti-competitive ends.

There is simply no necessary correlation between a carrier having an interest in calls carried over its system and the statutory criterion of whether rates in excess of transmission rates are imposed upon the public. The simple fact of the matter is that every carrier has an interest in every call carried on its system. In most instances, transmission rates charged the

public by other carriers offering free information services to stimulate traffic are less than, or at least approximately the same as, AT&T's. Even in the rare case where an unusually high transmission rate may exist, Section 228 is not designed to address whether transmission rates charged the public are too high. Sections 201 to 205 of the Communications Act address that question and the there is a long history of interpreting and applying those statutory provisions long before TDDRA was created to address a much more specialized problem of information service providers imposing special types of charges the public may not realize are being imposed. TDDRA is not a surrogate for the highly developed body of law governing rates charged by carriers to the public.

AT&T certainly has a great deal of experience with excessively high carrier charges and the regulatory procedures used to address them. Having worked hard for more than a decade to convince the Commission to relax its regulation of carrier rates, or at least its own rates, AT&T's sudden suggestion that the Commission should approach that problem indirectly through TDDRA seems rather peculiar. At least it may seem to peculiar until one realizes that what AT&T is, in fact, advocating is using this back door method of rate regulation only against the services of its competitors and not its own.

In any event, the statutory standard in Section 228 quite clearly pertain only to what callers to information services must pay. AT&T's Comments only illustrate the regulatory morass that is created when the "detailed, unambiguous and mandatory" are forsaken and the Commission is invited on mischievous witch hunts that Congress did not authorize.

The FTC Comments Are Predicated on a Misunderstanding of the FCC Proposal

As noted above, the FTC took the FCC at its word (or at least at the words the FCC used in Paragraph 12 and Footnote 25 of its Order and Notice of Proposed Rulemaking), and treated the FCC's proposals at if they did not make any change in the statutory definition of "pay-per-call services" to which the FCC is limited by statute. If all the FCC's proposal did was to assure that services that genuinely met the definition in Section 228 of the Communications Act were confined to 900 service, then its proposal might, at least, be within the ambit of the FCC's authority. Based on that understanding, the FTC expressed support for the FCC in generalized terms. But a careful examination of its discussion suggests it was simply assuming that somehow the FCC's proposal would only affect what were genuinely "pay-per-call services" within the meaning that Congress carefully assigned to that term.

Obviously, its concern that "consumers may be misled about the cost of a call and may therefore incur unanticipated costs for calls that contain an undisclosed charge" has no application to a call for which no premium charge is extracted from the consumer. The FTC's concerns are all directed to consumers being subjected to unknown and unjustified charges. Taking one inconsistent statement by the FCC to the exclusion of its specific proposal to extend radically the statutory definition (and perhaps also not being familiar with the nature of other communications services and of the state of competition in the communications industry), the FTC totally missed the point that the FCC was seeking to extend the statutory definition far beyond anything Congress had authorized.

The fact that the FTC was confused by a proposal buried as deeply as the redefinition proposal was buried amid the verbiage, and sometimes inconsistent verbiage, of the

Commission's Order and Notice of Proposed Rulemaking further emphasizes the CLECs point made earlier that there was not adequate notice to the public of the radical redefinition proposal introduced in Paragraph 48.

The Alliance of Young Families Makes Clear that the Desire to Control Content is At the Root of the "Redefinition" Proposal

Only one party requests action in the name of content-based concerns -- Ms. Donna J. Sheridan of Reno, Nevada, who filed Comments in the name of an organization called "The Alliance of Young Families." We are not familiar with "The Alliance of Young Families" and have not been able to find out anything about it beyond the cursory description Ms. Sheridan provided in her Comments of an "association of families residing in California, Nevada and Arizona with the common goal of providing the best possible life for raising children...." Since this is the only party who explicitly raises content-based concerns as the basis for recommended Commission action and the action it recommends would threaten serious impairment of fundamental rights under the First Amendment, it might be of some value to other members of the public to know somewhat more about the party's identity. Ms. Sheridan, however, provides no telephone number in her filing, and neither Ms. Sheridan nor "The Alliance of Young Families" is listed in any telephone directory or in any other commonly available source of such information of which we aware. Since one of the things Ms. Sheridan seeks in her Comments is full disclosure of the identity of a huge number of information service providers whether or not a charge is made for their service and no matter how inconsequential or harmless their service, it seems passing strange that she is unwilling to

supply virtually any meaningful information concerning the organization that seeks to persuade the Government to suppress an extraordinarily large amount of free speech.

Clearly, the "redefinition" proposal impacts a lot more than merely the "dial-a-porn" which The Alliance of Young Families attacks but does not seek to identify or distinguish from the bulk of information supplied by telecommunications services. Whatever The Alliance of Young Families may means when it applies that term and whether the term as it defines it is legally defensible, it makes no difference under the "redefinition"proposal it champions, since all information services would be treated as badly as "dial-a-porn." The Alliance of Young Families reasons that, if a proposal suppresses "dial-a-porn," it must be good -- irrespective of any other effects it may have. We respectfully disagree.

It is inescapably true that over generations there has been much speech carried over common carrier telecommunications facilities that was undesirable. This included such speech as plans to commit murder, arson and kidnaping and engage in a variety of criminal activities. While it might be true that suppressing communications would have had the effect of inhibiting the resulting acts, our most fundamental national law and our cumulative experience over centuries has told us that the public's freedom to speak and to hear should not be suppressed even to stop such clearly undesirable communications. Suppressing any form of speech would presumably have the effect of suppressing some speech which some, at least, may regard as undesirable. While recognizing that all speech may not be publicly beneficial, however, our national policy has favored enhancing, rather than suppressing, opportunities for speech and has carefully circumscribed the conditions under which Government is permitted to inhibit its exercise. The Alliance of Young Families calls "dial-a-porn" could be universally

regarded as undesirable, suppressing or inhibiting all free information services is not a suitable or a legal remedy.

The Alliance of Young Families notes with favor the 1989 Helms Amendment. The 1989 Helms Amendment was invalidated as unconstitutional by the Supreme Court in Sable Communications of California v. FCC, discussed at page 16 of our original Comments, since it was not sufficiently narrowly tailored to meet Constitutional muster. To eliminate all free information services in order to eliminate some indecent or "dial-a-porn" services would be a grotesquely inadequate follow-up to the Supreme Court's invalidation of an effort that was a lot more narrowly tailored than that. The Alliance would not be merely burning up "the house to roast the pig," in the memorable words of the Supreme Court in Butler v. Michigan, 323 U.S. at 383, it would be burning up the whole town.

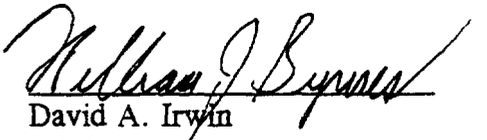
Moreover, Section 223 has been re-written by the Communications Decency Act of 1996 to address "indecency." Its Constitutionality, as the Commission is well aware, is subject to very considerable doubt. Section 228 is not a surrogate for an infirm Section 223 that even its supporters doubt will survive judicial scrutiny intact. But it is, at least, the proper place to raise the issue. The instant proposal to suppress a far broader category of speech, however, is a complete non-starter and its presentation to the Courts could only raise serious questions of whether the agency is making even the most rudimentary effort to observe the Court's mandate in Sable.

CONCLUSION

The Commission should discard the suggested "redefinition" of what Congress has already defined in Section 228 of the Communications Act and devote its efforts to enforcement of that provision as Congress wrote it.

TOTAL TELECOMMUNICATIONS, INC.,
SAMCOMM, INC. AND
BIG SKY TELECONFERENCING, LTD.

By Their Attorneys



David A. Irwin
William J. Byrnes
Michelle A. McClure

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, DC 20036-3101
202-728-0400

September 16, 1996

THE MEDIA BUSINESS

Advertising | Glenn Collins

Moviefone is adding descriptions of what's playing to its film guide and ticketing service.

On the last giant movie weekend of the summer, as Hollywood is about to trumpet its Labor Day film releases, Moviefone Inc. is about to trumpet its new advertising capability.

Moviefone, of course, is the nation's largest interactive movie guide and ticketing service, the company that has proffered not only such theater-information numbers as 777-FILM, but also its turbo-voiced movie-message guy. ("If you know the *name* of the movie you'd like to see — *press 1 now.*")

For years, Moviefone has offered a browsing feature that lists titles of available movies. Starting on Tuesday, however, a new service, called Previews, will enable callers to gain access to capsule descriptions of films. Callers can hear the basic story line of a movie as well as its cast, rating and running time.

"This provides us with a way to go to another level," said Matthew Ryan, chief executive of Ryan Drossman & Partners Inc., a small agency in Manhattan that in 1990 won Moviefone as its first client. "Until Previews, Moviefone has been a single-advertiser medium."

He referred to the 20-second advertising message that callers must endure before getting movie-theater information. "Some people may be annoyed by the ad, but they understand that hearing the ad is part of the deal," Andrew R. Jarecki, chief executive of Moviefone, said. "After all, Moviefone is a free service available for the price of a local phone call. It's not a 900-number pay-per-call service."

Currently Moviefone charges its advertisers, mostly Hollywood studios, 15 cents a caller. But thanks to the new Previews technology, "we now have the flexibility to have more than one advertiser," Mr. Ryan said. "It will allow studios that don't want to pay the premium for principal-advertiser status to be represented on Moviefone." Advertisers will pay a lower flat rate for inclusion in Previews.

To publicize Previews, Moviefone is starting what Mr. Jarecki said was a $10 million advertising campaign while "paying next to nothing." There will be theatrical trailers of the traditional coming-attractions variety, as well as advertising in newspapers nationwide, radio announcements and television spots.

Virtually all of it is cross-promotional advertising: bartered, given in return for plugs on Moviefone's message tapes.

Since the company's inception in 1989, Moviefone has allied itself with principal newspaper and radio stations in each of its 28 markets. This has been true in the New York metropolitan area, where The New York Times and radio station WNEW-FM are the local partners. The Times offers Moviefone promotional advertising space in return for its sponsorship mention on Moviefone's recorded message; no money changes hands.

Moviefone's barter strategy developed "since, from the very beginning, we had to figure out ways to promote Moviefone in the absence of money," Mr. Ryan said.

In a good week, Moviefone has one million callers nationally; the service now covers 10,000 movie screens accounting for 60 percent of movie attendance.

Moviefone registers such numbers as 222-FILM, 333-FILM and 777-FILM in different areas of the country.

Audience research has shown that fewer than 50 percent of callers know what movie they want to see, said Mr. Jarecki, who contended that callers were 20 percent more likely to go to a specific movie after hearing the Moviefone ad.

Moviefone had $11.2 million in revenues in 1995, up from $8.1 million in 1994. Its sister service on the Internet, MovieLink Online (http://www.movielink.com), offers a visual version of 777-FILM.

Moviefone has pitched itself to advertisers as a focused and targeted vehicle, and some have come on board in a major way: Sony/Columbia Tri-Star Motion Picture Group recently purchased nine million calls on Moviefone for its summer movies and the Walt Disney Company plans a heavy campaign for Christmas.

Moviefone has been a useful buy for studio marketers "because you are targeting an audience that is already interested in film," said John N. Krier, president of Exhibitor Relations Company, which monitors box office performance and film trends.

Since callers cannot channel-change or fast-forward the Moviefone advertisement, "it isn't zappable," said J. Russell Leatherman, who has been the leather-lunged Voice of Moviefone "since day one," he said. He also happens to be the company's president.

A former top-40 disk jockey on a radio station in Buffalo, Wyo., Mr. Leatherman explained that in 1990, when he recorded Moviefone's first message tape, he wanted to give moviegoers "a voice they'd remember." Mr. Leatherman assumed his disk jockey persona "and took the Dick Clark-on-crack approach," he said.

Last year, in the very week when the company's marketing mavens were considering silencing the abrasive Mr. Moviefone for good, they got a call from the "Seinfeld" show, asking if the sitcom could build a half-hour episode around The Voice.

Since that episode ran last November, Mr. Leatherman has found himself the spokeslarynx for Moviefone's brand identity on "Oprah," "Hard Copy" and "David Letterman."

But what do theater owners think of Moviefone? "It has been invaluable not only for moviegoers but also for exhibitors," said Robert Roberts, the owner of six theaters in New Jersey. "I'd say about half of our audiences use 777-FILM."

He added: "All it costs us is a fax to give Moviefone our film schedules. It's one of the few times that something that's advertised as free is actually free."

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, hereby certify that on this 16th day of September, 1996, copies of the foregoing "Reply Comments of Total Telecommunications, Inc., SaMComm, Inc., and Big Sky Teleconferencing, Ltd.", have been served by U.S. first-class mail, postage prepaid, upon the following:

Mr. Michael Adams
Law Offices of Thomas K. Crowe
2300 M Street, NW, Suite 800
Washington, DC 20037

Ms. Mary Mack Adu
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Ms. Jodi Bair
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Mr. Richard Blumenthal
Attorney General State of Connecticut
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105

Mr. Adam Cohn
Attorney
Federal Trade Commission
Washington, DC 20580

Mr. Gregg Collins
President
Movo Media, Inc.
9000 Sunset Blvd., Suite 515
West Hollywood, CA 90077

Mr. David Cosson
VP - Legal and Industry Affairs
National Telephone Cooperative Association
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Mr. Thomas Crowe
Law Offices of Thomas K. Crowe
2300 M Street, NW, Suite 800
Washington, DC 20037

Mr. Joel Robert Dichter
Klein, Zelman Briton Rothermel & Dichter
485 Madison Avenue, 15th Floor
New York, NY 10022

Mr. Joseph Dicks
Dicks & Dunning
2310 Symphony Towers, 750 B Street
San Diego, CA 92101-8122

Mr. Andrew Egendorf
P.O. Box 703
Lincoln, MA 01773

Hon. Bart Gordon
House of Representatives
2201 Rayburn Building
Washington, DC 20015-4204

Ms. Jane Jacobs
Klein, Zelman Briton Rothermel & Dichter
485 Madison Avenue, 15th Floor
New York, NY 10022

Mr. Peter Jacoby
AT&T Corp.
295 North Maple Avenue, Rm 3247H3
Basking Ridge, NJ 07920

Mr. Edwin Lavergne
Ginsburg, Feldman and Bress, Chartered
1250 Connecticut Avenue, NW, Suite 800
Washington, DC 20036

Ms. Cynthia Miller
Associate General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ms. Gail Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Ms. Kathryn Schmeltzer
Fisher Wayland Cooper Leader & Zarago
2001 Pennsylvania Ave, NW, Suite 400
Washington, DC 20006-1851

Ms. Donna Sheridan
516 Keystone Avenue, #517
Reno, NV 89503

Mr. Walter Steimel
Fish & Richardson P.C.
601 13th Street, NW, Fifth Floor North
Washington, DC 20005

Ms. Sarah Thomas
Pacific Bell
140 New Montgomery Street, Rm. 1522A
San Francisco, CA 94105

Mr. Keith Townsend
United States Independent Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005-2136

Mr. Ian Volner
Venable, Baetjer, Howard & Civiletti, L.L.P.
1201 New York Avenue, NW, Suite 1000
Washington, DC 20005

Mr. J. Paul Waters
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Mr. Jerusa Carl Wilson
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Ms. Lisa Zaina
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

Vanessa N. Duffy
Vanessa N. Duffy